

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Oct 07, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

OPAL V.,<sup>1</sup>

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:20-CV-03170-ACE

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND REMANDING FOR  
ADDITIONAL PROCEEDINGS

**ECF No. 22, 24**

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 22, 24. Attorney Christopher H. Dellert represents Opal V. (Plaintiff); Special Assistant United States Attorney Jeffrey E. Staples represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 5. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

**JURISDICTION**

Plaintiff protectively filed an application for Supplemental Security Income in February 2017, Tr. 15, 34, alleging disability since May 4, 2008, due to severe

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<sup>1</sup>To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. See LCivR 5.2(c).

1 asthma, back pain, diabetes, ulcerative colitis, psoriasis, obesity, allergies,  
2 depression, anxiety, PTSD, and a learning disorder. Tr. 173, 191-192. Plaintiff  
3 later amended her alleged onset date to February 3, 2017. Tr. 15, 34. The  
4 application was denied initially and upon reconsideration. Administrative Law  
5 Judge (ALJ) Laura Valente held a hearing on December 6, 2019, Tr. 32-52, and  
6 issued an unfavorable decision on January 3, 2020, Tr. 15-26. The Appeals  
7 Council denied Plaintiff's request for review on August 20, 2020. Tr. 1-6. The  
8 ALJ's January 2020 decision thus became the final decision of the Commissioner,  
9 which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff  
10 filed this action for judicial review on October 14, 2020. ECF No. 1.

### 11 **STATEMENT OF FACTS**

12 Plaintiff was born on May 4, 1990, Tr. 173, and was 26 years old on the  
13 amended alleged disability onset date, February 3, 2017, Tr. 34. She earned her  
14 GED in 2007. Tr. 192. Plaintiff testified she has two children, ages eight and six,  
15 and was responsible for their care. Tr. 37-38, 42. Plaintiff's children are deaf.  
16 Tr. 41-42.

17 Plaintiff's disability report indicates she stopped working on December 24,  
18 2016, because the work was seasonal (Salvation Army bell ringer during the  
19 Christmas season), but believed her conditions became severe enough to keep her  
20 from working on May 4, 2008. Tr. 192. At the administrative hearing, Plaintiff  
21 stated she worked as a bell ringer in November/December 2017, worked in 2018  
22 with Yakima Valley Farm Workers and Work First, and worked in 2018-2019 as a  
23 cashier at Walmart. Tr. 38-39, 41. She indicated she was fired from the cashier  
24 position because she had missed work due to problems with her hands. Tr. 39. At  
25 the time of the December 6, 2019 administrative hearing, Plaintiff was working  
26 four hours a day, five days a week as a receptionist. Tr. 45. However, she stated  
27 she would not be able to perform this job eight hours a day, five days a week,  
28 because of her health issues. Tr. 46.

1 She testified she experienced issues with her hands prior to working as a  
2 cashier, Tr. 44, but the pain increased significantly while working at that position,  
3 Tr. 39-40. After she was no longer working at Walmart, she was able to schedule  
4 and undergo carpal tunnel release surgeries. Tr. 40. Following the carpal tunnel  
5 release surgeries in March and June 2019, she was able to pick up and hold things  
6 for a longer period of time and her fingers were no longer completely numb (just  
7 the tips). Tr. 45.

8 Plaintiff testified she also suffers from allergies and asthma which cause her  
9 to get winded or short of breath, cause coughing and wheezing, and make her tire  
10 easily. Tr. 43. She takes medication for her symptoms, including injections or  
11 infusions, an albuterol inhaler, and a nebulizer. Tr. 42-44.

12 Plaintiff also indicated she has an umbilical hernia that causes pain  
13 throughout the day and makes her nauseated. Tr. 46-47. She stated she needed to  
14 have gastric bypass surgery before doctors would fix her hernia. Tr. 47.

### 15 STANDARD OF REVIEW

16 The ALJ is tasked with “determining credibility, resolving conflicts in  
17 medical testimony, and resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035,  
18 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with  
19 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
20 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
21 only if it is not supported by substantial evidence or if it is based on legal error.  
22 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
23 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
24 1098. Put another way, substantial evidence “is such relevant evidence as a  
25 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
26 *Perales*, 402 U.S. 389, 401 (1971), quoting *Consolidated Edison Co. v. NLRB*, 305  
27 U.S. 197, 229 (1938). If the evidence is susceptible to more than one rational  
28 interpretation, the Court may not substitute its judgment for that of the ALJ.

1 *Tackett*, 180 F.3d at 1098; *Morgan v. Commissioner of Social Sec. Admin.*, 169  
2 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative  
3 findings, or if conflicting evidence supports a finding of either disability or non-  
4 disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d  
5 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by  
6 substantial evidence will be set aside if the proper legal standards were not applied  
7 in weighing the evidence and making the decision. *Browner v. Secretary of Health*  
8 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### 9 SEQUENTIAL EVALUATION PROCESS

10 The Commissioner has established a five-step sequential evaluation process  
11 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
12 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant  
13 bears the burden of establishing a prima facie case of disability benefits. *Tackett*,  
14 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a  
15 physical or mental impairment prevents the claimant from engaging in past  
16 relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant cannot perform past  
17 relevant work, the ALJ proceeds to step five, and the burden shifts to the  
18 Commissioner to show (1) that Plaintiff can perform other substantial gainful  
19 activity and (2) that a significant number of jobs exist in the national economy  
20 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir.  
21 1984). If a claimant cannot make an adjustment to other work in the national  
22 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

### 23 ADMINISTRATIVE DECISION

24 On January 3, 2020, the ALJ issued a decision finding Plaintiff was not  
25 disabled as defined in the Social Security Act.

26 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
27 activity since February 3, 2017, the date the disability application was filed. Tr.  
28 17.

1 At step two, the ALJ determined Plaintiff had the following severe  
2 impairments: asthma, bilateral carpal tunnel syndrome, left upper extremity  
3 DeQuervain's,<sup>2</sup> obesity, and history of a hernia. Tr. 18.

4 At step three, the ALJ found Plaintiff did not have an impairment or  
5 combination of impairments that meets or medically equals the severity of one of  
6 the listed impairments. Tr. 19.

7 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
8 Plaintiff could perform light exertion level work with the following limitations:  
9 she can sit, stand, and walk six hours each in an eight-hour workday; she can never  
10 climb ladders, ropes or scaffolds; she can perform all other postural activities  
11 occasionally; she has no limits on her ability to balance; bilateral fine fingering and  
12 gross handling is limited to frequent; and she must avoid concentrated exposure to  
13 extreme cold, heat, pulmonary irritants and hazards. Tr. 20.

14 At step four, the ALJ found Plaintiff was able to perform her past relevant  
15 work as a fundraiser II, cashier II, and hospital admit clerk. Tr. 24.

16 Furthermore, the ALJ determined at step five that based on the testimony of  
17 the vocational expert, and considering Plaintiff's age, education, work experience,  
18 and RFC, Plaintiff was capable of making a successful adjustment to other work  
19 that exists in significant numbers in the national economy, including the jobs of  
20 storage facility rental clerk, furniture rental consultant, and marker. Tr. 24-26.

21 The ALJ thus concluded Plaintiff was not under a disability within the  
22 meaning of the Social Security Act at any time from February 3, 2017, the date the  
23 disability application was filed, through the date of the ALJ's decision, January 3,  
24 2020. Tr. 26.

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27 <sup>2</sup>DeQuervain's is a painful inflammation of tendons on the side of the wrist  
28 at the base of the thumb.

## ISSUES

The question presented is whether substantial evidence supports the ALJ's decision denying benefits and, if so, whether that decision is based on proper legal standards.

Plaintiff asserts the ALJ erred by: (1) failing to provide specific and legitimate reasons for discounting the opinions of Plaintiff's treating doctor, Patrick Moran, D.O.; (2) improperly acting as her own medical expert when formulating Plaintiff's RFC; (3) failing to provide specific, clear, and convincing reasons for discounting Plaintiff's allegations of physical dysfunction; and (4) failing to discuss or provide specific and legitimate reasons for discounting the opinion of state agency psychologist, Patricia Kraft, Ph.D. ECF No. 22 at 2.

## DISCUSSION

### A. Dr. Moran

Plaintiff first argues the ALJ erred by failing to provide specific and legitimate reasons for discounting the opinions of Plaintiff's treating doctor, Patrick Moran, D.O. ECF No. 22 at 4-14. Defendant responds the ALJ reasonably weighed the medical opinions of Dr. Moran. ECF No. 24 at 11-17.

For disability applications filed prior to March 27, 2017, the courts distinguish among the opinions of three types of acceptable medical sources: treating physicians, physicians who examine but do not treat the claimant (examining physicians) and those who neither examine nor treat the claimant (nonexamining physicians). *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). A treating physician's opinion carries more weight than an examining physician's opinion, and an examining physician's opinion is given more weight than that of a nonexamining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830. The Ninth Circuit has held that "[t]he opinion of a nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of either an examining physician or a treating

1 physician.” *Lester*, 81 F.3d at 830; *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th  
2 Cir. 1990) (finding a nonexamining doctor’s opinion “with nothing more” does not  
3 constitute substantial evidence).

4 In weighing the medical opinion evidence of record, the ALJ must make  
5 findings setting forth specific, legitimate reasons for doing so that are based on  
6 substantial evidence in the record. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th  
7 Cir. 1989). The ALJ must also set forth the reasoning behind his or her decisions  
8 in a way that allows for meaningful review. *Brown-Hunter v. Colvin*, 806 F.3d  
9 487, 492 (9th Cir. 2015) (finding a clear statement of the agency’s reasoning is  
10 necessary because the Court can affirm the ALJ’s decision to deny benefits only on  
11 the grounds invoked by the ALJ). “Although the ALJ’s analysis need not be  
12 extensive, the ALJ must provide some reasoning in order for us to meaningfully  
13 determine whether the ALJ’s conclusions were supported by substantial evidence.”  
14 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014).

15 On October 6, 2017, Dr. Moran, Plaintiff’s treating physician, completed a  
16 WorkFirst Documentation Request Form for Medical or Disability Condition.  
17 Tr. 699-703. Dr. Moran wrote that Plaintiff had “severe, persistent asthma” and  
18 “significantly reduced lung capacity.” Tr. 699. He opined Plaintiff should be  
19 limited to 1 to 10 hours of sedentary work per week. Tr. 699, 701.

20 On December 4, 2019, Dr. Moran filled out a “Medical Report” form at the  
21 request of Plaintiff’s attorney. Tr. 1000-1002. Dr. Moran indicated Plaintiff had  
22 been diagnosed with bilateral carpal tunnel syndrome, right cubital tunnel  
23 syndrome, thoracic out syndrome, and asthma. Tr. 1001. His prognosis was noted  
24 as “likely chronic pain/weakness.” Tr. 1001. He opined Plaintiff would likely  
25 miss two days of work per month on average due to exacerbation of her symptoms.  
26 Tr. 1001. Dr. Moran indicated Plaintiff would be restricted to sedentary work and  
27 would be limited to occasional use of her bilateral upper extremities for handling  
28 and reaching. Tr. 1002.



1 In reaching her RFC determination, the ALJ accorded “little weight” to the  
2 opinions of Dr. Moran, indicating that treatment notes showed Plaintiff’s asthma  
3 was generally well managed when she adhered to treatment; her breathing  
4 difficulties were usually in the context of acute issues such as exposure to  
5 wildfires, not using her inhaler, or smoking cigarettes; the opinion was not  
6 consistent with Plaintiff’s ability to care for two small children who have special  
7 needs and findings throughout the record that Plaintiff’s impairments improved  
8 with treatment; and the limitations were inconsistent with Plaintiff reported  
9 improvement in her hand issues following her carpal tunnel release surgeries and  
10 treatment notes indicating a fairly normal and unremarkable recent wellness exam.  
11 Tr. 23-24.

12 The ALJ instead accorded “some weight” to the nonexamining DDS  
13 opinions of Drs. Louis Martin and Alnoor Virji that Plaintiff could perform light  
14 exertion level work. Tr. 23, 76-77, 90-92. The ALJ found their opinions were  
15 generally supported by the treatment notes showing Plaintiff to be in no distress  
16 and to have improvement in her impairments with treatments and consistent with  
17 Plaintiff’s ability to care for her children and her desire to return to work. Tr. 23.

18 First, the only medical opinion evidence of record noted by the ALJ which  
19 contradicted the opinions of Dr. Moran is provided by the state agency  
20 nonexamining physicians, Tr. 23, and “[t]he opinion of a nonexamining physician  
21 cannot by itself constitute substantial evidence that justifies the rejection of the  
22 opinion of either an examining physician or a treating physician,” *Lester*, 81 F.3d  
23 at 830. Moreover, as asserted by Plaintiff, these opinions were rendered prior to  
24 the production of treatment records pertaining to Plaintiff’s carpal tunnel syndrome  
25 diagnoses, nerve conduction studies, and subsequent surgeries.

26 Second, the Court finds the ALJ’s non-compliance rationale unsupported.  
27 *See* Tr. 23 (noting “her asthma is generally well managed when she adheres to  
28 treatment”). The record reflects Plaintiff experienced asthma exacerbations



1 frequently, and the ALJ only states these issues are “generally tied to an acute issue  
2 such as exposure to wildfire smoke, running out of Albuterol, or smoking,” Tr. 23.  
3 The ALJ appears to indicate Plaintiff’s breathing issues resolved with treatment,  
4 Tr. 23, but the record does not clearly reflect this is the case, *see* Tr. 538, 558, 580,  
5 583-584, 589, 594, 601, 610, 648, 651-659, 677, 736, 752, 772, 780, 826, 901-904,  
6 933-946. The Court finds the ALJ’s non-compliance reasoning for discounting the  
7 opinions of Dr. Moran is not supported.

8 Third, the ALJ determined Dr. Moran’s assessed limitations were  
9 inconsistent with Plaintiff’s ability to care for two small children who have special  
10 needs. Tr. 23. However, the ALJ failed to describe what specific childcare  
11 activities of Plaintiff contradicted the opinion of Dr. Moran that Plaintiff was able  
12 to perform only a reduced range of sedentary work. If the ALJ fails to specify his  
13 rationale, a reviewing court is unable to review those reasons meaningfully without  
14 improperly “substitut[ing] our conclusions for the ALJ’s, or speculat[ing] as to the  
15 grounds for the ALJ’s conclusions.” *Brown-Hunter*, 806 F.3d at 492 quoting  
16 *Treichler*, 775 F.3d at 1103. Because the ALJ failed to identify what activities  
17 specifically contradicted the opinions of Dr. Moran and how those activities were  
18 inconsistent with Dr. Moran’s opinions, the Court finds the ALJ’s rationale for  
19 discounting Dr. Moran’s reports in this regard is also not properly supported.

20 Finally, the ALJ’s determination that the opinions of Dr. Moran were  
21 inconsistent with Plaintiff’s reported improvement of symptoms is also  
22 unsupported. The record reveals Plaintiff had issues with her hands/wrists  
23 throughout the relevant time period and before in this case. Tr. 547 (November  
24 2016), 548 (December 2016), 532-533 (April 2017), 785-786 (February 2018),  
25 823 (August 2018), 870-871 (January 2019), 862 (February 2019). Plaintiff  
26 underwent right carpal tunnel release surgery in March 2019, Tr. 868, and left  
27 wrist carpal tunnel release and left wrist first dorsal extensor release surgery in  
28 June 2019, Tr. 866. Although subsequent treatment notes indicate Plaintiff had

1 improvement following these surgeries, there is no indication her symptoms  
2 completely resolved and, in any event, this late 2019 improvement of symptoms is  
3 not a legitimate basis to discount the presence of hand limitations in 2017, 2018  
4 and early 2019 or Dr. Moran's reports regarding those limitations.

5 Based on the foregoing, the Court concludes the ALJ erred by failing to  
6 provide cogent, specific, and legitimate reasons for rejecting the assessed  
7 limitations of Dr. Moran. Plaintiff's RFC is an administrative finding, dispositive  
8 of the case, which is reserved to the Commissioner, and, by delegation of authority,  
9 to the ALJ. SSR 96-5p. It is thus the responsibility of the ALJ, not this Court, to  
10 make a RFC determination. Accordingly, Plaintiff's RFC must be redetermined,  
11 on remand, taking into consideration the opinions Dr. Moran, as well as any  
12 additional or supplemental evidence relevant to Plaintiff's claim.

13 **B. ALJ Acting as Medical Expert**

14 Plaintiff contends the ALJ erred by improperly acting as her own medical  
15 expert. ECF No. 22 at 14-16. Defendant asserts that the ALJ had no duty to order  
16 a consultative examination or consult with a medical expert as there has been no  
17 showing of inadequate, incomplete, or ambiguous evidence in this case.  
18 ECF No. 24 at 18-20.

19 It is well-settled that "the ALJ cannot arbitrarily substitute his own judgment  
20 for competent medical opinion . . . . [W]hile an [ALJ] is free to resolve issues of  
21 credibility as to lay testimony or to choose between properly submitted medical  
22 opinions, he is not free to set his own expertise against that of a physician who  
23 [submitted an opinion to or] testified before him." *McBrayer v. Secretary of*  
24 *Health and Human Servs.*, 712 F.2d 795, 799 (2d Cir. 1983) quoting *Gober v.*  
25 *Matthews*, 574 F.2d 772, 777 (3rd Cir. 1978); *see also Day v. Weinberger*, 522  
26 F.2d 1154, 1156 (9th Cir. 1975) (finding it is improper for an ALJ to act as his own  
27 medical expert); *Nguyen v. Chater*, 172 F.3d 31, 35 (1st Cir. 1999) (finding, as a  
28 lay person, an ALJ is "not at liberty to ignore medical evidence or substitute his

1 own views for uncontroverted medical opinion;” he is “simply not qualified to  
2 interpret raw medical data in functional terms.”); *Rohan v. Chater*, 98 F.3d 966,  
3 970 (7th Cir. 1996) (finding an ALJ “must not succumb to the temptation to play  
4 doctor and make [his] own independent medical findings”); *Ferguson v.*  
5 *Schweiker*, 765 F.2d 31, 37 (3d Cir. 1985) (finding an ALJ may not substitute his  
6 interpretation of laboratory reports for that of physician).

7 The Seventh Circuit has held that a typical case of an ALJ impermissibly  
8 “playing doctor” is when the ALJ draws medical conclusions themselves about a  
9 claimant without relying on medical evidence. *Green v. Apfel*, 204 F.3d 780, 782  
10 (7th Cir. 2000). An ALJ must not substitute his medical judgment for a doctor’s.  
11 *Schmidt v. Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990).

12 Here, the Court finds the ALJ erred by impermissibly substituted her own  
13 interpretation of the evidence for that of the treating doctor. While the ALJ found  
14 Dr. Moran’s assessed limitations were not supported by the record, the ALJ does  
15 not specify medical opinion evidence, other than the state agency reviewers noted  
16 above, that indicates Plaintiff is capable of performing work at the physical  
17 exertional level determined by the ALJ in this case. The ALJ erred by failing to  
18 provide cogent, specific, and legitimate reasons for rejecting treating physician  
19 Moran’s opinion that Plaintiff would be limited to a reduced range of sedentary  
20 exertion level work. A remand is required for reconsideration of Dr. Moran’s  
21 reports and for further development of the record.

### 22 **C. Plaintiff’s Subjective Complaints**

23 Plaintiff contends the ALJ also erred by improperly rejecting her subjective  
24 complaints. ECF No. 22 at 17-18. Defendant asserts substantial evidence supports  
25 the ALJ’s assessment of Plaintiff’s subjective complaints. ECF No. 24 at 3-11.

26 It is the province of the ALJ to make credibility determinations. *Andrews*,  
27 53 F.3d at 1039. However, the ALJ’s findings must be supported by specific  
28 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once

1 the claimant produces medical evidence of an underlying medical impairment, the  
2 ALJ may not discredit testimony as to the severity of an impairment because it is  
3 unsupported by medical evidence. *Reddick*, 157 F.3d 715, 722 (9th Cir. 1998).  
4 Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the  
5 claimant's testimony must be "specific, clear and convincing." *Smolen*, 80 F.3d at  
6 1281; *Lester*, 81 F.3d at 834. "General findings are insufficient: rather the ALJ  
7 must identify what testimony is not credible and what evidence undermines the  
8 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,  
9 918 (9th Cir. 1993).

10 The ALJ concluded Plaintiff's medically determinable impairments could  
11 reasonably be expected to cause her alleged symptoms; however, Plaintiff's  
12 statements concerning the intensity, persistence and limiting effects of those  
13 symptoms were not entirely consistent with the medical and other evidence of  
14 record. Tr. 21. The ALJ provided the following reasons for finding Plaintiff's  
15 subjective complaints not persuasive in this case: (1) the medical evidence of  
16 record did not support the level of impairment claimed; (2) the record reflects  
17 Plaintiff's symptoms improved with treatment; and (3) Plaintiff's ability to care for  
18 herself while also being the sole caretaker to her two disabled children was  
19 inconsistent with her allegations of disabling functional limitations. Tr. 21-23.

20 Given this matter must be remanded for additional proceedings to remedy  
21 defects in light of the ALJ's erroneous determination regarding the medical  
22 opinion evidence of record, *see supra*, the ALJ shall also reconsider Plaintiff's  
23 statements and testimony on remand and reassess what statements, if any, are not  
24 credible and, if deemed not credible, what specific evidence undermines those  
25 statements.

26 **D. Dr. Kraft**

27 Plaintiff asserts the ALJ erred by failing to discuss or provide an explanation  
28 for discounting the nonexamining opinion of state agency psychologist, Patricia

1 Kraft, Ph.D. ECF No. 22 at 18-19. Defendant responds the ALJ was not required  
2 to discuss a medical opinion that predated the amended alleged onset date as well  
3 as the application date. ECF No. 24 at 17-18.

4 On August 26, 2015, state agency reviewing medical professional Kraft  
5 opined that Plaintiff's mental impairments resulted in some moderate limitations  
6 and that Plaintiff should be restricted to superficial contact with coworkers and the  
7 general public. Tr. 62-63. The ALJ's decision did not mention this pre-disability  
8 application date assessment of Dr. Kraft.

9 The relevant time period in this action is from February 3, 2017 (the  
10 protective filing date of Plaintiff's disability application) through January 3, 2020  
11 (the date of the ALJ's determination in this case). Evidence from outside of this  
12 period of time can be deemed useful as background information; however, it is  
13 irrelevant to the extent that it does not address Plaintiff's medical status during the  
14 relevant period at issue in this action. *See Fair v. Bowen*, 885 F.2d 597, 600 (9th  
15 Cir. 1989) (medical opinions that predate the alleged onset of disability are  
16 relevant only to a claimant's burden of proving the condition has worsened).

17 Since this matter must be remanded for additional proceedings to remedy the  
18 above noted errors, the ALJ shall also be instructed to review the 2015 opinion of  
19 Dr. Kraft and accord it appropriate weight to the extent it is found to address  
20 Plaintiff's condition during the relevant period at issue in this matter.

### 21 CONCLUSION

22 Plaintiff argues the ALJ's decision should be reversed and remanded for  
23 additional proceedings. The Court has the discretion to remand the case for  
24 additional evidence and findings or to award benefits. *Smolen*, 80 F.3d at 1292.  
25 The Court may award benefits if the record is fully developed and further  
26 administrative proceedings would serve no useful purpose. *Id.* Remand is  
27 appropriate when additional administrative proceedings could remedy defects.  
28 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court

1 agrees with Plaintiff that further development is necessary for a proper  
2 determination to be made. *See* ECF No. 22 at 19.

3 The ALJ's RFC determination is not supported by substantial evidence in  
4 this case and must be reevaluated. On remand, the ALJ shall reassess the opinions  
5 of Drs. Moran and Kraft and all other medical evidence of record relevant to  
6 Plaintiff's claim for disability benefits. The ALJ shall further develop the record  
7 by directing Plaintiff to undergo a consultative physical examination and, if  
8 warranted, a consultative psychological examination. The ALJ shall reevaluate  
9 Plaintiff's subjective complaints, formulate a new RFC determination, obtain  
10 supplemental testimony from a vocational expert, if necessary, and take into  
11 consideration any other evidence or testimony relevant to Plaintiff's disability  
12 claim.

13 Accordingly, **IT IS ORDERED:**

14 1. Plaintiff's Motion for Summary Judgment, **ECF No. 22**, is  
15 **GRANTED**.

16 2. Defendant's Motion for Summary Judgment, **ECF No. 24**, is  
17 **DENIED**.

18 3. The matter is **REMANDED** to the Commissioner for additional  
19 proceedings consistent with this Order.

20 4. An application for attorney fees may be filed by separate motion.

21 The District Court Executive is directed to file this Order and provide a copy  
22 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and  
23 the file shall be **CLOSED**.

24 DATED October 7, 2022.



A handwritten signature in blue ink, reading "Alexander C. Ekstrom", is written over a horizontal line.

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE